

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F302445**

**ROBERT HOLLY**

**CLAIMANT**

**MUSKOGEE BRIDGE CO., INC.**

**RESPONDENT EMPLOYER**

**TRAVELERS INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED MAY 13, 2004**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came of for a hearing in Little Rock, Arkansas on April 27, 2004. A prehearing conference was held on October 21, 2003 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on March 5, 2003.
2. The compensation rate is based on an average weekly wage of \$480.

The claimant contends that he sustained a specific incident compensable injury on or about March 5, 2003, and is requesting temporary total disability benefits from March 6, 2003 through May 27, 2003, the date of the last medical report. The claimant

also contends that approximately \$16,000 in medical expenses have been incurred and remains outstanding and unpaid. The claimant requests attorney's fees on the controverted benefits.

The respondents contend that the claimant cannot sustain his burden of proving a compensable injury on or about March 5, 2003, and the claim has been controverted in its entirety.

The issues to be litigated are:

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits from March 6, 2003, through May 27, 2003.
4. Attorney's fees.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on March 5, 2003.
2. The compensation rate is based on an average weekly wage of \$480.
3. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury supported by objective findings.

4. The respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued.

5. The claimant has proven by a preponderance of the evidence that he remained in his healing period and unable to work from March 6, 2003 through at least May 27, 2003.

### **ORDER**

The claimant, 35 years old, contends he was hired as a heavy equipment operator for the respondent employer. In March 2003, the claimant was working in the Benton/Bryant area and lived in Biscoe. The claimant had a camper trailer set up at the work site area. A co-employee, Joe Lynn Harrison, stayed with the claimant on and off.

According to the claimant, he and a co-employee were carrying an I-beam down a hill when the other employee threw his end of the beam while he continued to hold his end of the beam. The claimant testified that this incident caused him to squat all the way down and he experienced a burning and tingling in his back with a sharp pain. The claimant testified that he reported to his supervisor, Joe Quinton, that he had hurt his back about 25 to 30 minutes after the incident. The claimant completed the rest of the day but did not move any more I-beams. The claimant bought some over-the-counter cream to put on his back and took Tylenol that evening. The next morning he was unable to move and an ambulance was called to take him to the Saline Memorial Hospital Emergency Room where he was given an I.V. of pain medication and released. The claimant left to go to his home in Biscoe and had to go to the Stuttgart Emergency Room because of the pain. The claimant was hospitalized for a week and underwent x-rays, a CAT scan and a MRI.

The claimant began treating with Dr. Dennis Yelvington following his stay at the Stuttgart Hospital, since Dr. Yelvington was on call when the claimant went to the hospital. The last visit with Dr. Yelvington was May 27, 2003. The claimant's symptoms when he was seeing Dr. Yelvington were sharp pain low in his back, burning and numbness to the point where his legs would start hurting badly. According to the claimant, his problems have subsided some and he worked one week for Pro-Transportation driving a big truck. He left that job because the bouncing hurt his back too much. The claimant also worked for Lindsey hauling gas and he worked for one month and left because of the back pain. According to the claimant, he has done odd jobs such as mowing yards and driving cars for car dealers.

The claimant clarified a 4-wheeler incident:

We were - - I was at the neighbors' when they were cooking out. And their kid was sitting on a 4-wheeler, and I sat with my legs hanging off the back - - just sat on it. And the kid was just revving it up, and, all of a sudden, he hit the gear, I guess. And, when he did, it ran over their curb - - their parking curb - - and flipped it over on me. (T., p. 19, lines 6-11.)

The claimant had already had the MRI before the April 11, 2003, 4-wheeler incident.

The claimant experienced some cracked ribs from the incident.

Under cross examination, the claimant testified he had worked for the respondent about two months before the March 5, 2003, incident. The claimant estimated the I-beam he was carrying on March 5, 2003, weighed between 200 and 300 pounds. The claimant verified that he had no prior back problems before the March 5, 2003, incident and verified that the medical report was incorrect that indicated he had back problems for six months. The claimant did verify that he had previously

had kidney stones which required two surgeries.

Robert Brunner, project manager for the respondent, testified that he learned of the claimant's back problems the morning of March 6, 2003 and he went to the hospital and later completed the notice of injury paperwork. Mr. Brunner verified that he advised the hospital staff that the company would be responsible for payment of the bill. Mr. Brunner also verified that he was aware the claimant contended that he had reported his injury to Joe Quinton the day of the injury.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2003). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has presented credible testimony of a specific incident where he and a co-worker were carrying an I-beam and the other employee tossed his end while the claimant continued to hold his end. The claimant testified to experiencing low back pain and to reporting the incident to his immediate supervisor,

Joe Quinton. The claimant sought emergency room medical treatment the morning after the work incident and received medication and some x-rays. The claimant was released and was admitted to Stuttgart Regional Medical Center the following day. The medical records noted "muscle spasms," which satisfy the definition of "objective findings," as required by Ark. Code Ann. §11-9-102(4)(D), as defined in subdivision (16). A MRI conducted on April 2, 2003, notes diffuse bulging of the disc at L3-4. I find the claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury arising out of and in the course of his employment and supported by objective findings. The contemporaneous medical records provide the same history as the claimant has presented in his testimony about how his back pain began. I found the claimant's account of the incident to be credible and there was no evidence presented to refute the incident and injury.

The respondents are liable for all reasonable and necessary medical treatment the claimant has sought. Ark. Code Ann. §11-9-508.

The claimant next contends that he is entitled to temporary total disability benefits from March 6, 2003, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

The claimant has testified that he has been unable to work since the March 5, 2003, injury with the exception of a one-week truck driving job, a one-month job with Lindsey and some odd jobs and part-time work he has pursued with driving cars for dealerships. The last medical report in evidence is a May 27, 2003, report from Dr.

Yelvington where he mentions an appointment with the spine clinic. The claimant was unable to see a spine surgeon because of his inability to pay for the visit; therefore, that appointment was not made. Dr. Yelvington does not specifically state that the claimant was unable to work in that report; however, he makes mention of the specialist appointment and does not indicate the claimant is at maximum medical improvement. If the claimant was at the end of his healing period, a spine specialist appointment would be unnecessary; therefore, I can only conclude that the claimant was still in his healing period as of May 27, 2003. I find the claimant has remained in his healing period and unable to work from March 6, 2003 through at least May 27, 2003.

### **ORDER**

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury supported by objective findings. The respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued. The claimant has proven by a preponderance of the evidence that he remained in his healing period and unable to work from March 6, 2003 through at least May 27, 2003.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

---

**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**